

REFERENCE TITLE: **civil rights; discrimination; employment**

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

## **HB 2606**

Introduced by  
Representatives Sinema, Heinz: Ableser, Brown, Campbell CH, Campbell CL,  
Chabin, Deschene, Farley, Fleming, Lopes, McGuire, Meza, Miranda B,  
Patterson, Schapira, Tovar, Senator Allen C

### **AN ACT**

AMENDING SECTIONS 32-2422, 32-2441, 32-2612, 32-2622, 41-1461 AND 41-1463, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1468; AMENDING SECTIONS 41-1491 AND 41-1492, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 9, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1492.12; RELATING TO CIVIL RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 32-2422, Arizona Revised Statutes, is amended to  
3 read:  
4 32-2422. Qualification of applicant for agency license:  
5 substantiation of work experience  
6 A. An applicant as a qualifying party for an agency license under this  
7 chapter shall:  
8 1. Be at least twenty-one years of age.  
9 2. Be a citizen or legal resident of the United States who is  
10 authorized to seek employment in the United States.  
11 3. Not have been convicted of any felony or currently be under  
12 indictment for a felony.  
13 4. Within the five years immediately preceding the application for an  
14 agency license, not have been convicted of any misdemeanor act involving:  
15 (a) Personal violence or force against another person or threatening  
16 to commit any act of personal violence or force against another person.  
17 (b) Misconduct involving a deadly weapon as provided in section  
18 13-3102.  
19 (c) Dishonesty or fraud.  
20 (d) Arson.  
21 (e) Theft.  
22 (f) Domestic violence.  
23 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has  
24 the same elements as an offense listed in title 13, chapter 34 or 34.1.  
25 (h) Sexual misconduct.  
26 5. Not be on parole, on community supervision, on work furlough, on  
27 home arrest, on release on any other basis or named in an outstanding arrest  
28 warrant.  
29 6. Not be serving a term of probation pursuant to a conviction for any  
30 act of personal violence or domestic violence, as defined in section 13-3601,  
31 or an offense that has the same elements as an offense listed in section  
32 13-3601.  
33 7. Not be either of the following:  
34 (a) Adjudicated mentally incompetent.  
35 (b) Found to constitute a danger to self or others pursuant to section  
36 36-540.  
37 8. Not have a disability as defined in section 41-1461, unless that  
38 person is a qualified individual ~~with a disability~~ as defined in section  
39 41-1461.  
40 9. Not have been convicted of acting or attempting to act as a private  
41 investigation agency or a private investigator without a license if a license  
42 was required.  
43 10. Have had a minimum of three years of full-time investigative  
44 experience or the equivalent of three years of full-time investigative  
45 experience that consists of actual work performed as an investigator for a

1 private concern, for the federal government or for a state, county or  
2 municipal government.

3 B. If the applicant for an agency license is a firm, partnership,  
4 association or corporation, the qualifications required by subsection A are  
5 required of the individual in active management who shall be the qualifying  
6 party of the firm, partnership, association or corporation.

7 C. Applicants for an agency license shall substantiate investigative  
8 work experience claimed as years of qualifying experience and provide the  
9 exact details as to the character and nature of the experience on a form  
10 prescribed by the department and certified by the employers. On written  
11 request, an employer shall submit to the employee a written certification of  
12 prior work experience within thirty days. The written certification is  
13 subject to independent verification by the director. If an employer goes out  
14 of business, the employer shall provide all employees with a complete and  
15 accurate record of their work history. If applicants are unable to supply  
16 written certification from an employer in whole or in part, applicants may  
17 offer written certification from persons other than an employer covering the  
18 same subject matter for consideration by the department. The burden of  
19 proving the minimum years of experience is on the applicant.

20 D. The department may deny an agency license if the department  
21 determines that the applicant does not meet the requirements of this section.

22 Sec. 2. Section 32-2441, Arizona Revised Statutes, is amended to read:  
23 32-2441. Qualification of applicant for associate or employee  
24 registration

25 An applicant for an associate or employee registration certificate  
26 shall:

- 27 1. Be at least eighteen years of age.
- 28 2. Be a citizen or legal resident of the United States who is  
29 authorized to seek employment in the United States.
- 30 3. Not have been convicted of any felony or currently be under  
31 indictment for a felony.
- 32 4. Within the five years immediately preceding the application for an  
33 associate or employee registration certificate, not have been convicted of  
34 any misdemeanor act involving:
  - 35 (a) Personal violence or force against another person or threatening  
36 to commit any act of personal violence or force against another person.
  - 37 (b) Misconduct involving a deadly weapon as provided in section  
38 13-3102.
  - 39 (c) Dishonesty or fraud.
  - 40 (d) Arson.
  - 41 (e) Theft.
  - 42 (f) Domestic violence.
  - 43 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has  
44 the same elements as an offense listed in title 13, chapter 34 or 34.1.
  - 45 (h) Sexual misconduct.



1 or an offense that has the same elements as an offense listed in section  
2 13-3601.

3 7. Not be either of the following:

4 (a) Adjudicated mentally incompetent.

5 (b) Found to constitute a danger to self or others pursuant to section  
6 36-540.

7 8. Not have a disability as defined in section 41-1461, unless that  
8 person is a qualified individual ~~with a disability~~ as defined in section  
9 41-1461.

10 9. Not have been convicted of acting or attempting to act as a  
11 security guard or a security guard agency without a license if a license was  
12 required.

13 B. The qualifying party for an agency license and the resident  
14 manager, if a resident manager is required PURSUANT TO SECTION 32-2616, shall  
15 have at least three years of full-time experience as a manager, supervisor or  
16 administrator of a security guard agency or three years of full-time  
17 supervisory experience with any federal, United States military, state,  
18 county or municipal law enforcement agency. The qualifying party for an  
19 agency license and the resident manager, if a resident manager is required  
20 PURSUANT TO SECTION 32-2616, must substantiate managerial work experience  
21 claimed as years of qualifying experience and provide the exact details as to  
22 the character and nature of the experience on a form prescribed by the  
23 department and certified by the employer. On written request, an employer  
24 shall submit to the employee a written certification of prior work experience  
25 within thirty calendar days. The written certification is subject to  
26 independent verification by the department. If an employer goes out of  
27 business, the employer shall provide registered employees with a complete and  
28 accurate record of their work history. If an applicant is unable to supply  
29 written certification from an employer in whole or in part, the applicant may  
30 offer written certification from persons other than an employer covering the  
31 same subject matter for consideration by the department. The burden of  
32 proving the minimum years of experience is on the applicant.

33 C. The department may deny an agency license if the department  
34 determines that the applicant is unfit based on a conviction, citation or  
35 encounter with law enforcement for a statutory violation.

36 Sec. 4. Section 32-2622, Arizona Revised Statutes, is amended to read:

37 32-2622. Qualifications of applicant for associate, security  
38 guard or armed security guard registration  
39 certificate

40 A. An applicant for an associate or a security guard registration  
41 certificate issued pursuant to this article shall:

42 1. Be at least eighteen years of age.

43 2. Be a citizen or legal resident of the United States who is  
44 authorized to seek employment in the United States.

- 1           3. Not have been convicted of any felony or currently be under  
2 indictment for a felony.
- 3           4. Within the five years immediately preceding the application for an  
4 associate, security guard or armed security guard registration certificate,  
5 not have been convicted of any misdemeanor act involving:
- 6           (a) Personal violence or force against another person or threatening  
7 to commit any act of personal violence or force against another person.
- 8           (b) Misconduct involving a deadly weapon as provided in section  
9 13-3102.
- 10           (c) Dishonesty or fraud.
- 11           (d) Arson.
- 12           (e) Theft.
- 13           (f) Domestic violence.
- 14           (g) A violation of title 13, chapter 34 or 34.1 or an offense that has  
15 the same elements as an offense listed in title 13, chapter 34 or 34.1.
- 16           (h) Sexual misconduct.
- 17           5. Not be on parole, on community supervision, on work furlough, on  
18 home arrest, on release on any other basis or named in an outstanding arrest  
19 warrant.
- 20           6. Not be serving a term of probation pursuant to a conviction for any  
21 act of personal violence or domestic violence, as defined in section 13-3601,  
22 or an offense that has the same elements as an offense listed in section  
23 13-3601.
- 24           7. Not be either of the following:
- 25           (a) Adjudicated mentally incompetent.
- 26           (b) Found to constitute a danger to self or others pursuant to section  
27 36-540.
- 28           8. Not have a disability as defined in section 41-1461, unless that  
29 person is a qualified individual ~~with a disability~~ as defined in section  
30 41-1461.
- 31           9. Not have been convicted of acting or attempting to act as an  
32 associate security guard or armed security guard without a license if a  
33 license was required.
- 34           B. An applicant for an armed security guard registration certificate  
35 issued pursuant to this chapter shall:
- 36           1. Meet the requirements of subsection A of this section.
- 37           2. Successfully complete all background screening and training  
38 requirements.
- 39           3. Not be a prohibited possessor as defined in section 13-3101 or as  
40 described in 18 United States Code section 922.
- 41           4. Not have been discharged from the armed services of the United  
42 States under other than honorable conditions.
- 43           5. Not have been convicted of any crime involving domestic violence as  
44 defined in section 13-3601.

1           Sec. 5. Section 41-1461, Arizona Revised Statutes, is amended to read:

2           ~~41-1461.~~ Definitions

3           In this article, unless the context otherwise requires:

4           1. "AUXILIARY AIDS AND SERVICES" INCLUDES:

5           (a) QUALIFIED INTERPRETERS OR OTHER EFFECTIVE METHODS OF MAKING  
6           AURALLY DELIVERED MATERIALS AVAILABLE TO INDIVIDUALS WITH HEARING  
7           IMPAIRMENTS.

8           (b) QUALIFIED READERS, TAPED TEXTS OR OTHER EFFECTIVE METHODS OF  
9           MAKING VISUALLY DELIVERED MATERIALS AVAILABLE TO INDIVIDUALS WITH VISUAL  
10          IMPAIRMENTS.

11          (c) ACQUISITION OR MODIFICATION OF EQUIPMENT OR DEVICES.

12          (d) OTHER SIMILAR SERVICES AND ACTIONS.

13          2. "BEING REGARDED AS HAVING SUCH A PHYSICAL OR MENTAL IMPAIRMENT":

14          (a) MEANS AN INDIVIDUAL WHO ESTABLISHES THAT THE INDIVIDUAL HAS BEEN  
15          SUBJECTED TO AN ACTION PROHIBITED UNDER THIS ARTICLE BECAUSE OF AN ACTUAL OR  
16          PERCEIVED PHYSICAL OR MENTAL IMPAIRMENT WHETHER OR NOT THE IMPAIRMENT LIMITS  
17          OR IS PERCEIVED TO LIMIT A MAJOR LIFE ACTIVITY.

18          (b) DOES NOT MEAN AN IMPAIRMENT THAT IS TRANSITORY AND MINOR. FOR THE  
19          PURPOSES OF THIS SUBDIVISION, "TRANSITORY IMPAIRMENT" MEANS AN IMPAIRMENT  
20          WITH AN ACTUAL OR EXPECTED DURATION OF SIX MONTHS OR LESS.

21          ~~1-~~ 3. "Covered entity" means an employer, employment agency, labor  
22          organization or joint labor-management committee.

23          ~~2-~~ 4. "Disability" means, with respect to an individual, except any  
24          impairment caused by current use of illegal drugs, any of the following:

25          (a) A physical or mental impairment that substantially limits one or  
26          more of the major life activities of the individual.

27          (b) A record of such a physical or mental impairment.

28          (c) Being regarded as having such a physical or mental impairment.

29          ~~3-~~ 5. "Employee":

30          (a) Means an individual employed by an employer.

31          (b) Does not include an elected public official of this state or any  
32          political subdivision of this state, any person chosen by an elected official  
33          to be on the elected official's personal staff, an appointee on the  
34          policymaking level or an immediate adviser with respect to the exercise of  
35          the constitutional or legal powers of the office, unless the person or  
36          appointee is subject to the civil service laws of this state or any political  
37          subdivision of this state.

38          ~~4-~~ 6. "Employer":

39          (a) Means a person who has fifteen or more employees for each working  
40          day in each of twenty or more calendar weeks in the current or preceding  
41          calendar year, and any agent of that person, except that to the extent that  
42          any person is alleged to have committed any act of sexual harassment,  
43          employer means, for purposes of administrative and civil actions regarding  
44          those allegations of sexual harassment, a person who has one or more  
45          employees in the current or preceding calendar year.

1 (b) Does not include either:

2 (i) The United States or any department or agency of the United  
3 States, a corporation wholly owned by the government of the United States or  
4 an Indian tribe.

5 (ii) A bona fide private membership club, other than a labor  
6 organization, that is exempt from taxation under section 501(c) of the  
7 internal revenue code of 1954.

8 ~~5-~~ 7. "Employment agency" means any person regularly undertaking with  
9 or without compensation to procure employees for an employer or to procure  
10 for employees opportunities to work for an employer and includes an agent of  
11 that person.

12 ~~6-~~ 8. "Labor organization":

13 (a) Means a labor organization and any agent of a labor organization.

14 (b) Includes:

15 (i) Any organization of any kind, any agency or employee  
16 representation committee, group, association or plan in which fifteen or more  
17 employees participate and that exists for the purpose, in whole or in part,  
18 of dealing with employers concerning grievances, labor disputes, wages, rates  
19 of pay, hours or other terms or conditions of employment.

20 (ii) Any conference, general committee, joint or system board or joint  
21 council that is subordinate to a national or international labor  
22 organization.

23 9. "MAJOR LIFE ACTIVITIES" INCLUDES:

24 (a) CARING FOR ONESELF, PERFORMING MANUAL TASKS, SEEING, HEARING,  
25 EATING, SLEEPING, WALKING, STANDING, LIFTING, BENDING, SPEAKING, BREATHING,  
26 LEARNING, READING, CONCENTRATING, THINKING, COMMUNICATING AND WORKING.

27 (b) THE OPERATION OF A MAJOR BODILY FUNCTION, INCLUDING FUNCTIONS OF  
28 THE IMMUNE SYSTEM, NORMAL CELL GROWTH AND DIGESTIVE, BOWEL, BLADDER,  
29 NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE AND REPRODUCTIVE  
30 FUNCTIONS.

31 ~~7-~~ 10. "Person" means one or more individuals, governmental agencies,  
32 political subdivisions, labor unions, partnerships, associations,  
33 corporations, legal representatives, mutual companies, joint-stock companies,  
34 trusts, unincorporated organizations, trustees, trustees in bankruptcy or  
35 receivers.

36 ~~8-~~ 11. "Qualified individual ~~with a disability~~" means a person with a  
37 disability who, with or without reasonable accommodation, is capable of  
38 performing the essential functions of the employment position that the  
39 individual holds or desires.

40 ~~9-~~ 12. "Reasonable accommodation" includes:

41 (a) Making existing facilities used by employees readily accessible to  
42 and usable by individuals with disabilities.

43 (b) Job restructuring, part-time or modified work schedules,  
44 reassignment to a vacant position, acquisition or modification of equipment  
45 or devices, appropriate adjustment or modification of examinations, training

1 materials or policies, the provision of qualified readers, TAPED TEXTS OR  
2 OTHER EFFECTIVE METHODS OF MAKING VISUALLY DELIVERED MATERIALS AVAILABLE TO  
3 INDIVIDUALS WITH VISUAL IMPAIRMENTS, THE PROVISION OF AUXILIARY AIDS AND  
4 SERVICES or interpreters and other similar accommodations SERVICES AND  
5 ACTIONS for individuals with disabilities.

6 ~~10.~~ 13. "Religion" means all aspects of religious observance and  
7 practice, as well as belief. Unlawful practices as prohibited by this  
8 article include practices with respect to religion unless an employer  
9 demonstrates that the employer is unable to reasonably accommodate to an  
10 employee's or prospective employee's religious observance or practice without  
11 undue hardship on the conduct of the employer's business.

12 ~~11.~~ 14. "Undue hardship":

13 (a) Means an action requiring significant difficulty or expense when  
14 considered in light of the factors set forth in subdivision (b) of this  
15 paragraph.

16 (b) When determining whether an accommodation would impose an undue  
17 hardship on a covered entity, factors to be considered include:

18 (i) The nature and cost of the accommodations needed under this  
19 article.

20 (ii) The overall financial resources of the facility or facilities  
21 involved in the provision of the reasonable accommodation, the number of  
22 persons employed at the facility, the effect on expenses and resources of the  
23 facility and any other impact of the accommodation on the operation of the  
24 facility.

25 (iii) The overall financial resources of the covered entity, the  
26 overall size of the business of the covered entity with respect to the number  
27 of its employees and the number, type and location of its facilities.

28 (iv) The type of operation or operations of the covered entity,  
29 including the composition, structure and functions of the workforce of the  
30 covered entity.

31 (v) The geographic separateness and the administrative or fiscal  
32 relationship of the facility to the covered entity.

33 Sec. 6. Section 41-1463, Arizona Revised Statutes, is amended to read:

34 41-1463. Discrimination; unlawful practices; definition

35 A. Nothing contained in this article shall be interpreted to require  
36 that the less qualified be preferred over the better qualified simply because  
37 of race, color, religion, sex, age, ~~disability~~ or national origin OR ON THE  
38 BASIS OF DISABILITY.

39 B. It is an unlawful employment practice for an employer:

40 1. To fail or refuse to hire or to discharge any individual or  
41 otherwise to discriminate against any individual with respect to the  
42 individual's compensation, terms, conditions or privileges of employment  
43 because of the individual's race, color, religion, sex, age, ~~disability~~ or  
44 national origin OR ON THE BASIS OF DISABILITY.

1           2. To limit, segregate or classify employees or applicants for  
2 employment in any way which would deprive or tend to deprive any individual  
3 of employment opportunities or otherwise adversely affect the individual's  
4 status as an employee, because of the individual's race, color, religion,  
5 sex, age, ~~disability~~ or national origin OR ON THE BASIS OF DISABILITY.

6           3. To fail or refuse to hire, to discharge, or to otherwise  
7 discriminate against any individual based on the results of a genetic test  
8 received by the employer, notwithstanding subsection I, paragraph 2 of this  
9 section.

10          C. It is an unlawful employment practice for an employment agency to  
11 fail or refuse to refer for employment or otherwise to discriminate against  
12 any individual because of the individual's race, color, religion, sex,  
13 age, ~~disability~~ or national origin OR ON THE BASIS OF DISABILITY or to  
14 classify or refer for employment any individual on the basis of the  
15 individual's race, color, religion, sex, age, ~~disability~~ or national origin  
16 OR ON THE BASIS OF DISABILITY.

17          D. It is an unlawful employment practice for a labor organization:

18           1. To exclude or to expel from its membership or otherwise to  
19 discriminate against any individual because of the individual's race, color,  
20 religion, sex, age, ~~disability~~ or national origin OR ON THE BASIS OF  
21 DISABILITY.

22           2. To limit, segregate or classify its membership or applicants for  
23 membership or to classify or fail or refuse to refer for employment any  
24 individual in any way which would deprive or tend to deprive the individual  
25 of employment opportunities or would limit those employment opportunities or  
26 otherwise adversely affect the individual's status as an employee or as an  
27 applicant for employment because of the individual's race, color, religion,  
28 sex, age, ~~disability~~ or national origin OR ON THE BASIS OF DISABILITY.

29           3. To cause or attempt to cause an employer to discriminate against an  
30 individual in violation of this section.

31          E. It is an unlawful employment practice for any employer, labor  
32 organization or joint labor-management committee controlling apprenticeship  
33 or other training or retraining programs, including on-the-job training  
34 programs, to discriminate against any individual because of the individual's  
35 race, color, religion, sex, age, ~~disability~~ or national origin OR ON THE  
36 BASIS OF DISABILITY in admission to or employment in any program established  
37 to provide apprenticeship or other training and, if the individual is an  
38 otherwise qualified individual ~~with a disability~~, to fail or refuse to  
39 reasonably accommodate the individual's disability.

40          F. With respect to ~~an~~ A QUALIFIED individual ~~with a disability~~, it is  
41 an unlawful employment practice for a covered entity to:

42           1. Participate in any contractual or other arrangement or relationship  
43 that has the effect of subjecting a qualified individual ~~with a disability~~  
44 who applies with or who is employed by the covered entity to unlawful  
45 employment discrimination ON THE BASIS OF DISABILITY.

1           2. Use standards, criteria or methods of administration that have the  
2 effect of discriminating on the basis of disability or that perpetuate the  
3 discrimination of others who are subject to common administrative control.

4           3. Exclude or otherwise deny equal jobs or benefits to ~~a-qualified~~ AN  
5 individual QUALIFIED FOR THE JOB OR BENEFITS because of the known disability  
6 of an individual with whom the ~~qualified~~ individual QUALIFIED FOR THE JOB OR  
7 BENEFITS is known to have a relationship or association.

8           4. Not make reasonable accommodations to the known physical or mental  
9 limitations of an otherwise qualified individual ~~with a disability~~ who is an  
10 applicant or employee unless the covered entity can demonstrate that the  
11 accommodation would impose an undue hardship on the operation of the business  
12 of the covered entity OR THE INDIVIDUAL ONLY MEETS THE DEFINITION OF  
13 DISABILITY AS PRESCRIBED IN SECTION 41-1461, PARAGRAPH 4, SUBDIVISION (c).

14           5. Deny employment opportunities to a job applicant or employee who is  
15 an otherwise qualified individual ~~with a disability~~ if the denial is based on  
16 the need of the covered entity to make reasonable accommodation to the  
17 physical or mental impairment of the applicant or employee.

18           6. Use qualification standards, employment tests or other selection  
19 criteria, INCLUDING THOSE BASED ON AN INDIVIDUAL'S UNCORRECTED VISION, that  
20 screen out or tend to screen out an individual with a disability or a class  
21 of individuals with disabilities, unless the standard, test or other  
22 selection criteria, as used by the covered entity, is shown to be job related  
23 for the position in question and is consistent with business necessity.

24           7. Fail to select and administer tests relating to employment in the  
25 most effective manner to ensure that, when the test is administered to a job  
26 applicant or employee who has a disability that impairs sensory, manual or  
27 speaking skills, the test results accurately reflect the skills, ~~OR~~ aptitude  
28 or whatever other factor of the applicant or employee that the test purports  
29 to measure, rather than reflecting the impaired sensory, manual or speaking  
30 skills of the applicant or employee, except if the skills are the factors  
31 that the test purports to measure.

32           G. Notwithstanding any other provision of this article, it is not an  
33 unlawful employment practice:

34           1. For an employer to hire and employ employees, for an employment  
35 agency to classify or refer for employment any individual, for a labor  
36 organization to classify its membership or classify or refer for employment  
37 any individual, or for an employer, labor organization or joint  
38 labor-management committee controlling apprenticeship or other training or  
39 retraining programs to admit or employ any individual in any such program, on  
40 the basis of the individual's religion, sex or national origin in those  
41 certain instances when religion, sex or national origin is a bona fide  
42 occupational qualification reasonably necessary to the normal operation of  
43 that particular business or enterprise.

1           2. For any school, college, university or other educational  
2 institution or institution of learning to hire and employ employees of a  
3 particular religion if the school, college, university or other educational  
4 institution or institution of learning is in whole or in substantial part  
5 owned, supported, controlled or managed by a particular religion or religious  
6 corporation, association or society, or if the curriculum of the school,  
7 college, university or other educational institution or institution of  
8 learning is directed toward the propagation of a particular religion.

9           3. For an employer to fail or refuse to hire or employ any individual  
10 for any position, for an employment agency to fail or refuse to refer any  
11 individual for employment in any position or for a labor organization to fail  
12 or refuse to refer any individual for employment in any position, if both of  
13 the following apply:

14           (a) The occupancy of the position or access to the premises in or upon  
15 which any part of the duties of the position are performed or are to be  
16 performed is subject to any requirement imposed in the interest of the  
17 national security of the United States under any security program in effect  
18 pursuant to or administered under any statute of the United States or any  
19 executive order of the President of the United States.

20           (b) The individual has not fulfilled or has ceased to fulfill that  
21 requirement.

22           4. With respect to age, for an employer, employment agency or labor  
23 organization:

24           (a) To take any action otherwise prohibited under subsection B, C or D  
25 of this section if age is a bona fide occupational qualification reasonably  
26 necessary to the normal operation of the particular business or if the  
27 differentiation is based on reasonable factors other than age.

28           (b) To observe the terms of a bona fide seniority system or any bona  
29 fide employee benefit plan such as a retirement, pension, deferred  
30 compensation or insurance plan, which is not a subterfuge to evade the  
31 purposes of the age discrimination provisions of this article, except that no  
32 employee benefit plan may excuse the failure to hire any individual and no  
33 seniority system or employee benefit plan may require or permit the  
34 involuntary retirement of any individual specified by section 41-1465 because  
35 of the individual's age.

36           (c) To discharge or otherwise discipline an individual for good cause.

37           H. As used in this article, unlawful employment practice does not  
38 include any action or measure taken by an employer, labor organization, joint  
39 labor-management committee or employment agency with respect to an individual  
40 who is a member of the communist party of the United States or of any other  
41 organization required to register as a communist-action or communist-front  
42 organization by final order of the subversive activities control board  
43 pursuant to the subversive activities control act of 1950.

44           I. Notwithstanding any other provision of this article, it is not an  
45 unlawful employment practice:

1           1. For an employer to apply different standards of compensation or  
2 different terms, conditions or privileges of employment pursuant to a bona  
3 fide seniority or merit system or a system which measures earnings by  
4 quantity or quality of production or to employees who work in different  
5 locations, provided that these differences are not the result of an intention  
6 to discriminate because of race, color, religion, sex or national origin.

7           2. For an employer to give and act upon the results of any  
8 professionally developed ability test provided that the test, its  
9 administration or action upon the results is not designed, intended or used  
10 to discriminate because of race, color, religion, sex or national origin.

11           3. For any employer to differentiate upon the basis of sex or  
12 disability in determining the amount of the wages or compensation paid or to  
13 be paid to employees of the employer if the differentiation is authorized by  
14 the provisions of section 6(d) or section 14 of the fair labor standards act  
15 of 1938, as amended (29 United States Code section 206(d)).

16           J. Nothing contained in this chapter applies to any business or  
17 enterprise on or near an Indian reservation with respect to any publicly  
18 announced employment practice of the business or enterprise under which a  
19 preferential treatment is given to any individual because the individual is  
20 an Indian living on or near a reservation.

21           K. Nothing contained in this article or article 6 of this chapter  
22 requires any employer, employment agency, labor organization or joint  
23 labor-management committee subject to this article to grant preferential  
24 treatment to any individual or group because of the race, color, religion,  
25 sex or national origin of the individual or group on account of an imbalance  
26 which may exist with respect to the total number or percentage of persons of  
27 any race, color, religion, sex or national origin employed by any employer,  
28 referred or classified for employment by any employment agency or labor  
29 organization, admitted to membership or classified by any labor organization  
30 or admitted to or employed in any apprenticeship or other training program,  
31 in comparison with the total number or percentage of persons of that race,  
32 color, religion, sex or national origin in any community, state, section or  
33 other area, or in the available work force in any community, state, section  
34 or other area.

35           L. Nothing in the age discrimination prohibitions of this article may  
36 be construed to prohibit compulsory retirement of any employee who has  
37 attained sixty-five years of age and who, for the two year period immediately  
38 before retirement, is employed in a bona fide executive or high policymaking  
39 position, if the employee is entitled to an immediate nonforfeitable annual  
40 retirement benefit from a pension, profit sharing, savings or deferred  
41 compensation plan or any combination of plans of the employer for the  
42 employee, which equals, in the aggregate, at least forty-four thousand  
43 dollars. In applying the retirement benefit test of this subsection, if any  
44 retirement benefit is in a form other than a straight life annuity, with no  
45 ancillary benefits, or if employees contribute to the plan or make rollover

1 contributions, the benefit shall be adjusted in accordance with rules adopted  
2 by the division so the benefit is the equivalent of a straight life annuity,  
3 with no ancillary benefits, under a plan to which employees do not contribute  
4 and under which no rollover contributions are made.

5 M. A covered entity may require that an individual with a disability  
6 shall not pose a direct threat to the health or safety of other individuals  
7 in the workplace. For the purposes of this subsection, "direct threat" means  
8 a significant risk to the health or safety of others that cannot be  
9 eliminated by reasonable accommodation.

10 N. For the purposes of this section and section 41-1481, with respect  
11 to employers or employment practices involving a disability, "individual"  
12 means a qualified individual ~~with a disability~~.

13 Sec. 7. Title 41, chapter 9, article 4, Arizona Revised Statutes, is  
14 amended by adding section 41-1468, to read:

15 41-1468. Interpretation of disability and substantially limits;  
16 definitions

17 A. A PERSON SHALL DEFINE AND CONSTRUE A DISABILITY IN FAVOR OF BROAD  
18 COVERAGE OF INDIVIDUALS UNDER THIS ARTICLE TO THE MAXIMUM EXTENT PERMITTED BY  
19 THE TERMS OF THIS ARTICLE.

20 B. A PERSON SHALL INTERPRET SUBSTANTIALLY LIMITS CONSISTENTLY WITH THE  
21 FINDINGS AND PURPOSES OF THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122  
22 STAT. 3553).

23 C. AN IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE MAJOR LIFE ACTIVITY  
24 NEED NOT LIMIT OTHER MAJOR LIFE ACTIVITIES IN ORDER TO BE CONSIDERED A  
25 DISABILITY.

26 D. AN IMPAIRMENT THAT IS EPISODIC OR IN REMISSION IS A DISABILITY IF  
27 IT WOULD SUBSTANTIALLY LIMIT A MAJOR LIFE ACTIVITY WHEN ACTIVE.

28 E. THE DETERMINATION OF WHETHER AN IMPAIRMENT SUBSTANTIALLY LIMITS A  
29 MAJOR LIFE ACTIVITY SHALL BE MADE WITHOUT REGARD TO THE AMELIORATIVE EFFECTS  
30 OF MITIGATING MEASURES SUCH AS:

31 1. MEDICATION, MEDICAL SUPPLIES, EQUIPMENT OR APPLIANCES, LOW-VISION  
32 DEVICES, EXCLUDING ORDINARY EYEGASSES OR CONTACT LENSES, PROSTHETICS,  
33 INCLUDING LIMBS AND DEVICES, HEARING AIDS AND COCHLEAR IMPLANTS OR OTHER  
34 IMPLANTABLE HEARING DEVICES, MOBILITY DEVICES OR OXYGEN THERAPY EQUIPMENT AND  
35 SUPPLIES.

36 2. USE OF ASSISTIVE TECHNOLOGY.

37 3. REASONABLE ACCOMMODATIONS OR AUXILIARY AIDS OR SERVICES.

38 4. LEARNED BEHAVIORAL OR ADAPTIVE NEUROLOGICAL MODIFICATIONS.

39 F. THE AMELIORATIVE EFFECTS OF THE MITIGATING MEASURES OF ORDINARY  
40 EYEGASSES OR CONTACT LENSES SHALL BE CONSIDERED IN DETERMINING WHETHER AN  
41 IMPAIRMENT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY.

42 G. FOR THE PURPOSES OF THIS SECTION:

43 1. "LOW-VISION DEVICES" MEANS DEVICES THAT MAGNIFY, ENHANCE OR  
44 OTHERWISE AUGMENT A VISUAL IMAGE.

1           2. "ORDINARY EYEGLASSES OR CONTACT LENSES" MEANS LENSES THAT ARE  
2 INTENDED TO FULLY CORRECT VISUAL ACUITY OR ELIMINATE REFRACTIVE ERROR.

3           Sec. 8. Section 41-1491, Arizona Revised Statutes, is amended to read:  
4 41-1491. Definitions

5           In this article, unless the context otherwise requires:

6           1. "Aggrieved person" includes any person who either:

7           (a) Claims to have been injured by a discriminatory housing practice.

8           (b) Believes that he will be injured by a discriminatory housing  
9 practice that is about to occur.

10          2. "Complainant" means a person, including the attorney general, who  
11 files a complaint under section 41-1491.22.

12          3. "Conciliation" means the attempted resolution of issues raised by a  
13 complaint or by the investigation of the complaint through informal  
14 negotiations involving the aggrieved person, the respondent and the attorney  
15 general.

16          4. "Conciliation agreement" means a written agreement setting forth  
17 the resolution of the issues in conciliation.

18          5. "Disability" means a mental or physical impairment that  
19 substantially limits at least one major life activity, a record of such an  
20 impairment or being regarded as having such an impairment. Disability does  
21 not include current illegal use of or addiction to any drug or illegal or  
22 federally controlled substance. Disability shall be defined AND CONSTRUED as  
23 the term is defined AND CONSTRUED by the Americans with disabilities act of  
24 1990 (P.L. 101-336) AND THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122  
25 STAT. 3553).

26          6. "Discriminatory housing practice" means an act prohibited by  
27 sections 41-1491.14 through 41-1491.21.

28          7. "Dwelling" means either:

29          (a) Any building, structure or part of a building or structure that is  
30 occupied as, or designed or intended for occupancy as, a residence by one or  
31 more families.

32          (b) Any vacant land that is offered for sale or lease for the  
33 construction or location of a building, structure or part of a building or  
34 structure described by subdivision (a) of this paragraph.

35          8. "Family" includes a single individual.

36          9. "Person" means one or more individuals, corporations, partnerships,  
37 associations, labor organizations, legal representatives, mutual companies,  
38 joint stock companies, trusts, unincorporated organizations, trustees,  
39 receivers, fiduciaries, banks, credit unions and financial institutions.

40          10. "Respondent" means either:

41          (a) The person accused of a violation of this article in a complaint  
42 of a discriminatory housing practice.

43          (b) Any person identified as an additional or substitute respondent  
44 under section 41-1491.25 or an agent of an additional or substitute  
45 respondent.

1 11. "To rent" includes to lease, to sublease, to let or to otherwise  
2 grant for a consideration the right to occupy premises not owned by the  
3 occupant.

4 Sec. 9. Section 41-1492, Arizona Revised Statutes, is amended to read:  
5 ~~41-1492.~~ Definitions

6 In this article, unless the context otherwise requires:

7 1. "Americans with disabilities act" means 42 United States Code  
8 sections 12101 through 12213 and 47 United States Code sections 225 and 611  
9 AND THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122 STAT. 3553).

10 2. "Auxiliary aids and services" includes:

11 (a) Qualified interpreters or other effective methods of making  
12 aurally delivered materials available to individuals with hearing  
13 impairments.

14 (b) Qualified readers, taped text or other effective methods of making  
15 visually delivered materials available to individuals with visual  
16 impairments.

17 (c) Acquisition or modification of equipment or devices.

18 (d) Other similar services and actions.

19 3. "BEING REGARDED AS HAVING SUCH A PHYSICAL OR MENTAL IMPAIRMENT":

20 (a) MEANS AN INDIVIDUAL WHO ESTABLISHES THAT THE INDIVIDUAL HAS BEEN  
21 SUBJECTED TO AN ACTION PROHIBITED UNDER THIS ARTICLE BECAUSE OF AN ACTUAL OR  
22 PERCEIVED PHYSICAL OR MENTAL IMPAIRMENT WHETHER OR NOT THE IMPAIRMENT LIMITS  
23 OR IS PERCEIVED TO LIMIT A MAJOR LIFE ACTIVITY.

24 (b) DOES NOT MEAN AN IMPAIRMENT THAT IS TRANSITORY AND MINOR. FOR THE  
25 PURPOSES OF THIS SUBDIVISION, "TRANSITORY IMPAIRMENT" MEANS AN IMPAIRMENT  
26 WITH AN ACTUAL OR EXPECTED DURATION OF SIX MONTHS OR LESS.

27 ~~3-~~ 4. "Commercial facilities" means facilities that are intended for  
28 nonresidential use and that do not meet the definition of either a public  
29 accommodation or a public entity. Commercial facilities do not include  
30 railroad locomotives, railroad freight cars, railroad cabooses, railroad  
31 cars, railroad rights-of-way or facilities that are covered or expressly  
32 exempted from coverage under this article.

33 ~~4-~~ 5. "Demand responsive system" means any system of providing the  
34 transportation of individuals by a vehicle, other than a system that is a  
35 fixed route system.

36 ~~5-~~ 6. "Disability" means, with respect to an individual, any of the  
37 following:

38 (a) A physical or mental impairment that substantially limits one or  
39 more of the major life activities of the individual.

40 (b) A record of such an impairment.

41 (c) Being regarded as having such an impairment.

42 ~~6-~~ 7. "Fixed route system" means a system of providing the  
43 transportation of individuals by, other than by aircraft, a vehicle that is  
44 operated along a prescribed route according to a fixed schedule.

- 1           8. "MAJOR LIFE ACTIVITIES" INCLUDES:  
2           (a) CARING FOR ONESELF, PERFORMING MANUAL TASKS, SEEING, HEARING,  
3 EATING, SLEEPING, WALKING, STANDING, LIFTING, BENDING, SPEAKING, BREATHING,  
4 LEARNING, READING, CONCENTRATING, THINKING, COMMUNICATING AND WORKING.  
5           (b) THE OPERATION OF A MAJOR BODILY FUNCTION, INCLUDING FUNCTIONS OF  
6 THE IMMUNE SYSTEM, NORMAL CELL GROWTH AND DIGESTIVE, BOWEL, BLADDER,  
7 NEUROLOGICAL, BRAIN, RESPIRATORY, CIRCULATORY, ENDOCRINE AND REPRODUCTIVE  
8 FUNCTIONS.
- 9           ~~7.~~ 9. "Over-the-road bus" means a bus characterized by an elevated  
10 passenger deck located over a baggage compartment.
- 11           ~~8.~~ 10. "Private entity" means any entity other than a public entity.  
12           ~~9.~~ 11. "Public accommodation" includes any:  
13           (a) Inn, hotel, motel or other place of lodging, except for an  
14 establishment located within a building that contains not more than five  
15 rooms for rent or hire and that is actually occupied by the proprietor of the  
16 establishment as the residence of the proprietor.  
17           (b) Restaurant, bar or other establishment serving food or drink.  
18           (c) Motion picture house, theater, concert hall, stadium or other  
19 place of exhibition or entertainment.  
20           (d) Auditorium, convention center, lecture hall or other place of  
21 public gathering.  
22           (e) Bakery, grocery store, clothing store, hardware store, shopping  
23 center or other sales or retail establishment.  
24           (f) Laundromat, dry cleaner, bank, barber shop, beauty shop, travel  
25 service, shoe repair service, funeral parlor, gas station, office of an  
26 accountant or lawyer, pharmacy, insurance office, professional office of a  
27 health care provider, hospital or other service establishment.  
28           (g) Terminal, depot or other station used for specified public  
29 transportation.  
30           (h) Museum, library, gallery or other place of public display or  
31 collection.  
32           (i) Park, zoo, amusement park or other place of recreation.  
33           (j) Nursery, elementary, secondary, undergraduate or postgraduate  
34 private school or other place of education.  
35           (k) Day care center, senior citizen center, homeless shelter, food  
36 bank, adoption agency or other social service center establishment.  
37           (l) Gymnasium, health spa, bowling alley, golf course or other place  
38 of exercise or recreation.
- 39           ~~10.~~ 12. "Public entity" means any:  
40           (a) State or local government.  
41           (b) Department, agency, special purpose district or other  
42 instrumentality of a state or local government, including the legislature.  
43           ~~11.~~ 13. "Rail" or "railroad" has the meaning given the term "railroad"  
44 in section 202(e) of the federal railroad safety act of 1970 (45 United  
45 States Code section 431(e)).

1           ~~12-~~ 14. "Readily achievable" means easily accomplishable and able to  
2 be carried out without much difficulty or expense. In determining whether an  
3 action is readily achievable, factors to be considered include:

4           (a) The nature and cost of the action needed under this article.

5           (b) The overall financial resources of the facility or facilities  
6 involved in the action, the number of persons employed at the facility, the  
7 effect on expenses and resources or the impact otherwise of such action on  
8 the operation of the facility.

9           (c) The overall financial resources of the covered entity.

10           (d) The overall size of the business of a covered entity with respect  
11 to the number of its employees.

12           (e) The number, type and location of the covered entity's facilities.

13           (f) The type of operation or operations of the covered entity,  
14 including the composition, structure and functions of the facilities in  
15 question to the covered entity.

16           ~~13-~~ 15. "Specified public transportation" means transportation by bus,  
17 rail or any other conveyance, other than aircraft, that provides the general  
18 public with general or special service, including charter service, on a  
19 regular and continuing basis.

20           ~~14-~~ 16. "State" means the state of Arizona.

21           ~~15-~~ 17. "Vehicle" does not include a rail passenger car, railroad  
22 locomotive, railroad freight car, railroad caboose or railroad car covered  
23 under this article.

24           Sec. 10. Title 41, chapter 9, article 8, Arizona Revised Statutes, is  
25 amended by adding section 41-1492.12, to read:

26           41-1492.12. Interpretation of disability and substantially  
27 limits; definitions

28           A. A PERSON SHALL DEFINE AND CONSTRUE A DISABILITY IN FAVOR OF BROAD  
29 COVERAGE OF INDIVIDUALS UNDER THIS ARTICLE TO THE MAXIMUM EXTENT PERMITTED BY  
30 THE TERMS OF THIS ARTICLE.

31           B. A PERSON SHALL INTERPRET SUBSTANTIALLY LIMITS CONSISTENTLY WITH THE  
32 FINDINGS AND PURPOSES OF THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122  
33 STAT. 3553).

34           C. AN IMPAIRMENT THAT SUBSTANTIALLY LIMITS ONE MAJOR LIFE ACTIVITY  
35 NEED NOT LIMIT OTHER MAJOR LIFE ACTIVITIES IN ORDER TO BE CONSIDERED A  
36 DISABILITY.

37           D. AN IMPAIRMENT THAT IS EPISODIC OR IN REMISSION IS A DISABILITY IF  
38 IT WOULD SUBSTANTIALLY LIMIT A MAJOR LIFE ACTIVITY WHEN ACTIVE.

39           E. THE DETERMINATION OF WHETHER AN IMPAIRMENT SUBSTANTIALLY LIMITS A  
40 MAJOR LIFE ACTIVITY SHALL BE MADE WITHOUT REGARD TO THE AMELIORATIVE EFFECTS  
41 OF MITIGATING MEASURES SUCH AS:

42           1. MEDICATION, MEDICAL SUPPLIES, EQUIPMENT OR APPLIANCES, LOW-VISION  
43 DEVICES, EXCLUDING ORDINARY EYEGASSES OR CONTACT LENSES, PROSTHETICS,  
44 INCLUDING LIMBS AND DEVICES, HEARING AIDS AND COCHLEAR IMPLANTS OR OTHER

- 1 IMPLANTABLE HEARING DEVICES, MOBILITY DEVICES OR OXYGEN THERAPY EQUIPMENT AND
- 2 SUPPLIES.
- 3 2. USE OF ASSISTIVE TECHNOLOGY.
- 4 3. REASONABLE ACCOMMODATIONS OR AUXILIARY AIDS OR SERVICES.
- 5 4. LEARNED BEHAVIORAL OR ADAPTIVE NEUROLOGICAL MODIFICATIONS.
- 6 F. THE AMELIORATIVE EFFECTS OF THE MITIGATING MEASURES OF ORDINARY
- 7 EYEGASSES OR CONTACT LENSES SHALL BE CONSIDERED IN DETERMINING WHETHER AN
- 8 IMPAIRMENT SUBSTANTIALLY LIMITS A MAJOR LIFE ACTIVITY.
- 9 G. FOR THE PURPOSES OF THIS SECTION:
- 10 1. "LOW-VISION DEVICES" MEANS DEVICES THAT MAGNIFY, ENHANCE OR
- 11 OTHERWISE AUGMENT A VISUAL IMAGE.
- 12 2. "ORDINARY EYEGASSES OR CONTACT LENSES" MEANS LENSES THAT ARE
- 13 INTENDED TO FULLY CORRECT VISUAL ACUITY OR ELIMINATE REFRACTIVE ERROR.